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Synthes Spine Company, L.P.
and Spine Solutions, Inc.*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

CALVIN TIMBERLAKE and)	CASE NO. CV 08 80067MISC
KAREN TIMBERLAKE,)	
)	CASE NO. 6-08-CV-0004 (S.D.
Plaintiffs,)	Tex.)
)	
vs.)	CONSENT MOTION FOR STAY
)	OF ALL PROCEEDINGS AND
SYNTHES SPINE COMPANY, L.P.)	INCORPORATED
)	MEMORANDUM IN SUPPORT
Defendant)	THEREOF
_____)	

COME NOW Plaintiffs Calvin Timberlake and Karen Timberlake (hereinafter "Plaintiffs") and Defendants Synthes Spine Company, L.P. and Spine Solutions, Inc. (hereinafter "Defendants") (hereinafter collectively "the Parties") and hereby stipulate and respectfully move for a stay of all proceedings in this Court pending a decision from the United States District Court for the Southern District of Texas, Victoria Division regarding Defendants' Motions for Protective Order and Objections to Plaintiffs' Third-Party Subpoenas ("Motions for Protective Order"), as outlined in the Parties' Stipulation of Agreement Regarding Plaintiffs' Subpoenas for Records. A true and correct copy of the Parties' Stipulation of Agreement Regarding Plaintiffs' Subpoenas for Records is attached hereto as Exhibit A.

I.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiffs filed their First Amended Original Complaint in this matter on February 21, 2008 in the United States District Court For The Southern District Of Texas Victoria Division. Defendant Synthes Spine Company, L.P. ("Synthes") filed its Answer to Plaintiffs' First Amended Original Complaint and its Motion to Dismiss or in the Alternative to Transfer Venue on March 13, 2008. Defendant Spine Solutions, Inc. ("Spine Solutions") filed its Answer to Plaintiffs' First Amended Original Complaint and Motion to Transfer Venue on March 31, 2008. Upon information and belief, Defendants Viscogliosi Brothers, L.L.C., Marc R. Viscogliosi, John J. Viscogliosi, and Anthony G. Viscogliosi were served with Plaintiffs' First Amended Original Complaint on March 26, 2008, but have not yet filed responsive pleadings.

2. Plaintiffs, in violation of FED.R.CIV.P. 26(d), prematurely served ten non-party subpoenas for records on various physicians and entities in six different district courts. Defendants Synthes and Spine Solutions filed Motions for Protective Order in the Southern District of Texas requesting that the Court

1 preclude Plaintiffs' non-party subpoenas. Defendant Synthes also filed Motions
2 to Quash or, in the Alternative, Stay Plaintiffs' Non-Party Subpoena in the six
3 different district courts.

4 I.

5 ARGUMENT AND CITATION OF AUTHORITY

6 3. The Court has broad discretionary powers to stay the proceedings
7 before it. *Landis v. North American Co.*, 229 U.S. 248, 254 (1936) ("[T]he
8 power to stay proceedings is incidental to the power inherent in every court to
9 control the disposition of the causes on its docket with economy of time and
10 effort for itself, for counsel and for litigation."); *Morrison v. Amway Corp.*, 49
11 F.Supp.2d 529, 532 (S.D.Tex. 1998) (citing and quoting *Landis*). This Court
12 should exercise its discretion to stay this case until there is a ruling on the pending
13 Motions for Protective Order filed by Defendants Synthes and Spine Solutions.

14 4. Plaintiffs admit to prematurely serving the subpoenas at issue in this
15 Court. Plaintiffs and Defendants recognize that the Motions for Protective Order
16 filed by Defendants Synthes and Spine Solutions will directly affect the validity
17 and breadth of the subpoenas at issue in the six different district courts. Plaintiffs
18 and Defendants Synthes and Spine Solutions agree that no hearings will be
19 scheduled or will proceed in any of the courts where the subpoenas are pending
20 prior to a ruling on Defendants Synthes' and Spine Solutions' Motions for
21 Protective Order. Defendants Synthes and Spine Solutions in no way waive their
22 right to pursue their Motions to Quash and objections in any of the other courts
23 where the subpoenas are pending. Further, Plaintiffs' and Defendants Synthes'
24 and Spine Solutions' consent to stay the issue of the non-party subpoena at issue
25 in the other courts in no way affects the non-parties' right to object or otherwise
26 respond to the subpoenas.

27 ///

28 ///

1 Consented and agreed to on this 24th day of April, 2008, by:

2 **GREENBERG TRAURIG, L.L.P.**

3 /s/ Lori G. Cohen
4 Lori G. Cohen
5 Georgia State Bar No. 174455
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6 Christiana C. Jacxsens
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11 *Attorneys for Defendants*
12 *Synthes Spine Company, L.P.*
and Spine Solutions, Inc.

13 Consented and agreed to on this 24th day of April, 2008 by:

14 **COLE, COLE & EASLEY, P.C.**

15 /s/ James W. Cole
16 James W. Cole
17 State Bar No. 04538500
Federal ID No. 5886
William B. Sciba, III.

18 302 W. Forrest Street
19 P.O. Drawer 510
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20 Phone: (361) 575-0551
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21 **ATTORNEYS FOR PLAINTIFFS**

EXHIBIT A

6. Defendants Synthes and Spine Solutions filed Motions for Protective Order in this Court requesting that the Court preclude Plaintiffs' non-party subpoenas;
7. Defendant Synthes also filed Motions to Quash or, in the Alternative, Stay Plaintiffs' Non-Party Subpoenas in the respective districts for all ten subpoenas issued by Plaintiffs;
8. Plaintiffs and Defendants Synthes and Spine Solutions agree to stay any and all offensive and defensive actions related to said subpoenas until ten (10) days after the Court issues a ruling on the pending Motions to Transfer filed by Synthes and Spine Solutions;
9. Plaintiffs shall be required to respond with regard to all pending Motions for Protective Order and Motions to Quash on or before ten (10) days from the date the Court issues a ruling on the pending Motions to Transfer;
10. Plaintiffs and Defendants Synthes and Spine Solutions agree that no hearings will be scheduled, nor will the parties proceed in any of the courts where the subpoenas are pending prior to a ruling on Defendants Synthes' and Spine Solutions' Motions for Protective Order by this Court or by the Southern District of Texas, Houston Division, should this case be transferred. Defendants Synthes and Spine Solutions in no way waive their right to pursue their Motions to Quash and objections properly filed in the courts where the subpoenas are pending;
11. Plaintiffs agree to withdraw any non-party subpoenas issued, but not yet served and the effected non-parties should not be required to respond or object to Plaintiffs' subpoenas during the agreed-upon time period in which this issue is stayed; and,
12. Plaintiffs' and Defendants Synthes' and Spine Solutions' agreement to stay the issue of the non-party subpoenas in no way affects the non-parties' right to object or otherwise respond to the subpoenas, except for as expressly provided above.

Agreed and accepted this 18th day of April, 2008.

Respectfully submitted,

GREENBERG TRAURIG, L.L.P.

/s/ Lori G. Cohen
Lori G. Cohen

Georgia State Bar No. 174455
Admitted Pro Hac Vice

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am an employee of Greenberg Traurig LLP, and my business address is 1201 K Street, Suite 1100, Sacramento, CA 95814. On this day I caused to be served the following document(s):

Consent Motion For Stay Of All Proceedings And Incorporated Memorandum In Support Thereof; [Proposed Order Granting Consent Motion To Stay Proceedings]

☐ By placing a true copy, in a sealed envelope, with postage fully prepaid, in the United States Post Office mail at Sacramento, California, addressed as set forth below. I am familiar with this firm's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mail box after the close of the day's business.

☐ By personal delivery of a true copy to the person and at the address set forth below.

☒ By Federal Express Mail to the person and at the address set forth below.

☐ By transmitting via ELECTRONIC MAIL (EMAIL) the document(s) listed above to the EMAIL addresses set forth below on this date at approximately ____ pm from my computer. The transmission was reported as complete and without error by the computer. I caused the computer to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting computer.

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Jim Zucherman, M.D.
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San Francisco, California 94117

Viscogliosi Brothers, LLC
Anthony G. Viscogliosi
Marc. R. Viscogliosi
John J. Viscogliosi
505 Park Avenue, 14th Floor
New York, New York 10022

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 24, 2008, at Sacramento, California.


IAN AINSWORTH

ATL168519301